SUPREME COURT, U.S.

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 380

EVERETT ROBINSON, PETITIONER,

vs.

UNITED STATES OF AMERICA.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

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## INDEX


Opinions Below ..... 1
Jurisdiction ..... 1
Questions Presented ..... 2
Statutes Involved ..... 3
Statement ..... 3
Reasons for Granting the Writ ..... 7
Conclusion ..... 8
Appendix A—Statutes ..... A1
Appendix B—Opinions and Judgment Below ..... A32


### Citations

CASES:


*Allen* v. *United States*, 164 U.S. 492 ..... 6
*Apodaca* v. *United States*, 10 Cir., 188 F.2d 932 ..... 6
*Baca* v. *United States*, 10 Cir., 312 F.2d 510, cert. denied 373 U.S. 952 ..... 6
*Carter* v. *United States*, 10 Cir., 333 F.2d 354 ..... 6
*DeVault* v. *United States*, 10 Cir., 338 F.2d 179 ..... 6
*Long* v. *United States*, 10 Cir., 139 F.2d 652 ..... 6
*Mills* v. *Tinsley*, 10 Cir., 314 F.2d 311, cert. denied 374 U.S. 847 ..... 6
*Wion* v. *United States*, 10 Cir., 337 F.2d 230 ..... 6


STATUTES:


Title 12 U.S.C. Section 1131-1134 (m) ..... 3
Title 18 U.S.C. 1014 ..... 3

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above entitled case on May 26, 1965.

## CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals, Tenth Circuit, printed in Appendix B hereto, infra, p. A32 is reported in ____ F.2d ____.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 26, 1965, p. A32, infra. The jurisdiction

of this Court is invoked under 28 U.S.C., Section 1254 (1) and Rule 22 (2). The order granting an extension to file a petition for writ of certiorari was enlarged to July 23, 1965, printed in Appendix B hereto, p. A32.

## QUESTIONS PRESENTED

Whether an instruction given by the Court was proper after the jury wrote to the Judge of their inability to reach a verdict.

Whether the court erred in admitting exhibits into evidence over the petitioner's objections when copies of such exhibits had not been furnished the petitioner as previously ordered by the court.

Whether a requested instruction by petitioner requiring the jurors to return a finding of not guilty if a reasonable doubt exists as to defendant's guilt should be given.

Petitioner's motion for acquittal should have been sustained at the close of the government's case in chief and not taken under advisement until all evidence was received.

Whether the Court can give an instruction (i.e. Instruction No. 12) requiring the jury to find against the petitioner on an essential element of the charged offense when that element, along with other elements of the offense are in issue before the jury. Such an instruction removes the reasonable doubt presumption in favor of the petitioner as to that element of the alleged offense.

Whether a motion for new trial which is supported by an affidavit containing allegations of newly discovered evidence material to petitioner and may disprove his guilt denied petitioner due process.

## STATUTES INVOLVED

The statutory provisions involved are Sections 1131-1134 (m) of Title 12, U.S.C. and Title 18, U.S.C. 1014. They are printed in Appendix A, infra, pp. A1-A31.

## STATEMENT

### How Federal Question Is Presented

1. This is a review of a Federal Court of Appeals decision. The basis for the Federal jurisdiction is a Federal criminal case involving Title 12, U.S.C., Sections 1131-1134 (m) and Title 18, U.S.C. 1014.

### Statement of Case

On September 17, 1962, an indictment was returned charging petitioner, Everett Robinson, with knowingly, unlawfully and willfully making a false statement relative to his financial condition in an application for a loan to the Larned Production Credit Association, a corporation organized under Sections 1131-1134 (m) of Title 12, U.S.C., concerning his liabilities by listing a total liability of $30,000 when in fact he had liabilities in excess of $75,000, which application for a loan was made to influence the Larned Production Credit Association and the said Larned Production Credit Association relying on said false statement in said application for a loan did make a loan to him in the sum of $30,000. The indictment further alleged that said false statement was made by the petitioner in violation of 18 U.S.C. 1014 (R. 3).

The petitioner filed a motion for a bill of particulars (R. 4) which was overruled in all particulars except that respondent was ordered to furnish the petitioner with

anything signed by him (R. 5, 29, 30). At the trial of this case, commenced May 28, 1963, the trial court was informed that this previous order of the court had not been complied with and throughout the course of the trial, objection was made to the admission into evidence of items signed by the petitioner of which copies had not been furnished to him (R. 37, 90, 98). Thus, one of the questions involved is WHETHER OR NOT THE COURT ERRED IN ADMITTING SUCH EXHIBITS INTO EVIDENCE OVER THE PETITIONER'S OBJECTIONS WHEN COPIES OF SUCH EXHIBITS HAD NOT BEEN FURNISHED THE PETITIONER AS PREVIOUSLY ORDERED BY THE COURT.

Except where dispute was indicated, the evidence disclosed that the defendant signed an "application for a loan". The application did not indicate the amount of the loan "applied for" (R. 58, 149).

Prior to January 12, 1961, the date the application was purportedly executed by the petitioner, the Larned Production Credit Association wrote the defendant informing him that a loan had been approved (R. 68).

Certain additions were made to the loan application by parties other than the defendant, outside his presence, and after he had signed it (R. 59 et seq.).

On January 17, 1961, the executive committee of the Larned Production Credit Association met and purportedly approved the loan of $30,000 to the petitioner. The following day, January 18, 1961, the petitioner drew a draft on the Larned Production Credit Association for the amount of the loan (R. 153). This he was authorized to do under the terms and procedures of the loan.

The evidence developed that there were considerable additional liabilities besides those shown in the financial

statement portion of the loan application. It was petitioner's position, and still is, that Mr. Hammond, who prepared the application purportedly from information given him by the petitioner (R. 38), asked only that the petitioner divulge what banks he owed.

The petitioner interposed a motion for acquittal at the conclusion of the respondent's case in chief (R. 101), and renewed this motion at the conclusion of all the evidence (R. 127). Thus, another question involved is WHETHER THE COURT ERRED IN OVERRULING THE PETITIONER'S MOTION FOR ACQUITTAL since the loan had obviously been approved prior to the execution of the "application" by the petitioner as evidenced by the letter to the petitioner from the Larned Production Credit Association dated October 14, 1960 (R. 160), and in view of the fact that the loan application itself did not indicate the amount of the loan.

The court gave Instruction No. 12 (R. 11) to the jury, over the objections of the petitioner (R. 128). This instruction required the jury, as a matter of law, to find against petitioner on an essential disputed issue of fact. Such an instruction removes the reasonable doubt presumption from the case regarding this element of the charged offense and, therefore, violates petitioner's constitutional due process.

After the jury had deliberated for several hours, the court received a communication from the foreman of the jury indicating that they were deadlocked and could not reach a verdict at that time or at any later time (R. 129). The court then orally instructed the jury in detail concerning their duties and requesting further deliberations (R. 129). This gives rise to another question and that is WHETHER THE COURT ERRED IN GIVING AN ORAL

INSTRUCTION FOR THE JURY TO RETURN TO THEIR DELIBERATIONS.

After a verdict of guilty was returned, and as provided by law, the petitioner filed a motion for a new trial (R. 19). An affidavit in support of the allegations of newly discovered evidence and showing that the loan commitment had been determined prior to the loan application by petitioner was filed (R. 21). On July 15, 1963, this motion was argued to the court (R. 132) and on that date overruled. At that time, the petitioner again renewed his motion for acquittal (R. 135) which was likewise overruled. This raises another question and that is WHETHER THE COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION FOR A NEW TRIAL.

The Court below affirmed the instruction given by the Court requiring the jury to give further consideration to the case upon the authority of that type of instruction having been approved in the Tenth Circuit. *DeVault* v. *United States,* 10 Cir., 338 F.2d 179; *Carter* v. *United States,* 10 Cir., 333 F.2d 354; *Mills* v. *Tinsley,* 10 Cir., 314 F.2d 311, cert. denied 374 U.S. 847; *Apodaca* v. *United States,* 10 Cir., 188 F.2d 932. See *Allen* v. *United States,* 164 U.S. 492.

The Court below affirmed the Order of the District Court as to the overruling of a motion for new trial upon the authority of *Baca* v. *United States,* 10 Cir., 312 F.2d 510, cert. denied 373 U.S. 952; *Wion* v. *United States,* 10 Cir., 337 F.2d 230; *Long* v. *United States,* 10 Cir., 139 F.2d 652; and finding that there was no abuse of discretion in denying the motion. The newly discovered evidence is sufficiently substantial and the motion for new trial should have been granted in order to provide petitioner with due process of law and particularly when the newly discovered evidence

is not cumulative but reaches a material element of the charged offense and may disprove his guilt.

## REASONS FOR GRANTING THE WRIT

1. Clearly, the question of the instruction given by the Court charging the jury to give further consideration to a case after the jury had expressed a hopeless deadlock is of importance in the administration of criminal justice. Settlement of this question by this court is plainly in the public interest since it is likely to be presumed that in almost every criminal case in which the jury makes a like report to the trial judge, the trial judges in the Tenth Circuit will give an instruction forcing the jury to a conclusion. This control by judicial coercion should not be approved by the Supreme Court.

2. The decision of the Court below is believed to be erroneous, not only as to the opinion concerning the instruction after the jury had announced a deadlock and the opinion concerning petitioner's motion for new trial but also the portion of the opinion considering the other errors presented by petitioner before the lower Court and considered by that Court to be without merit have been urged before this Court in this petition for writ of certiorari.

3. The practical effect of the lower Court's decision will have the consequence of permitting trial judges to "demand" a verdict from a deadlocked jury and will sanction and approve such criminal justice procedure. It is, therefore, important that the Supreme Court review and announce a decision demonstrating that the decision below is erroneous.

## CONCLUSION

For the forgoing reasons this petition for a Writ of Certiorari should be granted.

Dated July 20th, 1965.

Respectfully submitted,

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# APPENDIX A—STATUTES

## Title 12, Banks and Banking

### § 1131a—1. Maximum amount for administrative expenses; exclusions

Not to exceed $1,644,000 (to be computed on an accrual basis) of the funds of the corporations shall be available for administrative expenses, including the purchase of not to exceed six passenger motor vehicles for replacement only, and services performed for the corporations by other Government agencies (except services and facilities furnished and examinations made by the Farm Credit Administration); and said total sum shall be exclusive of interest expense, legal and special services performed on a contract or fee basis, and expenses in connection with the acquisition, operation, maintenance, improvement, protection, or disposition of real or personal property belonging to the corporations or in which they have an interest. June 4, 1956, c. 355, Title IV, § 401, 70 Stat. 240.

### § 1131c. Purchase of stock of production credit associations; payment; retirement and cancellation of stock

The Governor may purchase class A stock of any production credit association in such amounts as he determines are required to meet the credit needs of farmers in the area served by such association. Payments for such stock purchased by the Governor shall be made out of the revolving fund authorized by section 1131(a) of this title. The Governor may at any time require any production credit association to retire and cancel any class A stock held by him in such association if, in his judgment, the

association has resources available therefor, and the proceeds of such stock retirements shall be paid into such revolving fund. June 16, 1933, c. 98, Title I, § 6, 48 Stat. 259; Aug. 6, 1953, c. 335, § 11, 67 Stat. 395; July 26, 1956, c. 741, Title I, § 105(e), 70 Stat. 665.

**§ 1131d. Organization; articles of association; charters; bylaws; powers of governor respecting associations**

The governor is authorized and directed to organize and charter corporations to be known as "Production Credit Associations." Such associations may be organized by ten or more farmers desiring to borrow money under the provisions of sections 1131d-1131g and 1131h of this title. Such individuals shall enter into articles of incorporation which shall specify in general terms the objects for which the association is formed and the powers to be exercised by it in carrying out the functions conferred upon it by this subchapter. Such articles shall be signed by the individuals uniting to form the association and a copy thereof shall be furnished to the governor. The governor may, for good cause shown, deny a charter to such individuals. Upon the approval of such articles by the governor, the association shall become as of the date of such approval a body corporate. The governor shall have power, under rules and regulations prescribed by him, or by prescribing the terms of the charter of the association, or both, to provide for the organization, management, and conduct of the business of the association; and the power of the governor shall extend to prescribing the amount of the stock of such association; fixing the territory within which its operations may be carried on; fixing the method of election and appointment of, and the amount and payment of the compensation of, directors, officers, and employees; fixing the maximum amount of individual loans which may be made;

prescribing the conditions under which the stock may be retired; and providing for the consolidation of two or more such associations. The governor may, at any time, direct such changes in the charter of any such association as he finds necessary in accomplishing the purposes of sections 1131d-1131g and 1131h of this title. Bylaws of any such association may be adopted by the directors but shall not be valid unless approved by the governor. June 16, 1933, c. 98, Title II, § 20, 48 Stat. 259; July 26, 1956, c. 741, Title I, § 105 (f), 70 Stat. 665.

**§ 1131e. Capital stock; value of shares; classes of stock; voting rights; limitation on transfer of class B stock; exchange of class B stock upon holder ceasing to be borrower; dividends**

The stock of such associations shall be divided into shares of $5 each; and there shall be two classes of such stock: (1) Class A stock which is to be held by the Governor and which may be purchased and held by investors, and (2) class B stock which may be purchased only by farmer borrowers from the association and individuals eligible to become borrowers. Class B stock only shall be entitled to voting rights but each holder of such stock shall be entitled to no more than one vote. No class B stock, or any interest therein or right to receive dividends thereon, shall be transferred by act of parties or operation of law except to another farmer borrower or an individual eligible to become a borrower, and then only with the approval of the directors of the association. Each holder of class B stock, within two years after he has ceased to be a borrower, shall exchange such class B stock at the fair book value (not to exceed par) thereof, as determined by the association, for class A stock. Dividends may be paid on class A and class B stock without preference or on class A stock alone, as the board of directors of the association may determine,

but the directors of the association may, in their discretion, apply the amount of any dividend payable to a holder of class B stock to any indebtedness of such holder to the association. Class A stock shall be preferred as to assets of the association upon liquidation. June 16, 1933, c. 98, Title II, § 21, 48 Stat. 260; Aug. 11, 1955, c. 785, Title II, § 201, 69 Stat. 663; July 26, 1956, c. 741, Title I, § 105 (g), 70 Stat. 665.

**§ 1131c—1. Same; issuance of class C stock; conditions, privileges, restrictions, limitations, and qualifications**

(a) Any other provisions of law to the contrary notwithstanding, after the effective date of this Act any production credit association may, with the approval of the Farm Credit Administration, issue nonvoting preferred stock, to be known as class C stock, which may be purchased and held by the Governor of the Farm Credit Administration and by investors; *Provided*, That the issuance of such stock shall be authorized by vote of not less than two-thirds of the outstanding shares of class A stock of the association (other than shares held by the Governor of the Farm Credit Administration) by the holders thereof in person or by proxy and by vote of not less than two-thirds of the outstanding shares of class B stock of the association by the holders thereof in person or by proxy; and for this purpose holders of class A stock (other than the Governor of the Farm Credit Administration) and holders of class B stock shall be entitled to one vote for each share of stock held by them. Payments for such stock purchased by the Governor shall be made out of the revolving fund created by section 1131i(a) of this title and the proceeds from the retirement of any such stock shall be paid into such revolving fund.

(b) Such class C stock of such associations shall be divided into shares of $5 each. The resolution of the stockholders authorizing the issuance of class C stock and every certificate of class C stock issued shall state and express the privileges, restrictions, limitations, and qualifications affecting said stock, and the total amount of the authorized issue to which it belongs.

(c) Such class C stock may (1) be made subject to redemption in such manner, at such time or times, and at such price or prices; (2) be given such preferences as to net assets upon dissolution of the corporation, whether voluntary or involuntary; (3) be given the right to receive such cumulative or noncumulative dividends payable quarterly, semiannually, or annually, and payable as a whole or in part before any dividend shall be set apart for or paid on class A and class B stock; and (4) be made subject to such other restrictions, limitations, and qualifications; as shall be stated and expressed in the resolution of the stockholders authorizing the issuance thereof and in the face of the stock certificates. Aug. 6, 1953, c. 335, § 16, 67 Stat. 399; July 26, 1956, c. 741, Title I, § 107(b), 70 Stat. 666.

**§ 1131f. Application of earnings; restoration of capital impairment; surplus account; dividends**

(a) Each production credit association shall, at the end of each fiscal year, apply the amount of its earnings in excess of operating expenses (including provision for reasonable valuation reserves) during such fiscal year, first, to the restoration of the impairment, if any, of capital; and, second, to the establishment and maintenance of a surplus account, the minimum amount of which shall be prescribed by the Federal intermediate credit bank.

(b) A production credit association may pay dividends of not to exceed 7 per centum per annum when such payments are approved by the Federal intermediate credit

bank of the district and are consistent with policies established under regulations issued by the Farm Credit Administration. June 16, 1933, c. 98, Title II, § 22, 48 Stat. 261; Aug. 11, 1955, c. 785, Title II, § 202, 69 Stat. 663; July 26, 1956, c. 741, Title I, § 105(h), 70 Stat. 665.

**§ 1131g. Loans to farmers; limitation on indebtedness; ownership of stock**

Each production credit association shall under such rules and regulations as may be prescribed by the farm credit board of the district with the approval of the Farm Credit Administration, invest its funds and make loans to farmers for general agricultural purposes and other requirements of the borrowers. No borrower shall be indebted to the association at any one time in an amount in excess of 15 per centum of the capital and surplus of the association unless the loan has the prior approval of the Federal intermediate credit banks, or in excess of 35 per centum of the capital and surplus of the association unless the loan also has the prior approval of the Farm Credit Administration. Borrowers shall be required to own, at the time the loan is made, class B stock of the association in an amount equal in fair book value (not to exceed par), as determined by the association, to $5 per $100 or fraction thereof of the amount of the loan. Such stock shall not be canceled or retired upon payment of the loan but may be transferred or exchanged as provided in section 1131e of this title. June 16, 1933, c. 98, Title II, § 23, 48 Stat. 261; Aug. 11, 1955, c. 785, Title II, § 204, 69 Stat. 663; July 26, 1956, c. 741, Title I, § 105(i), 70 Stat. 665.

**§ 1131g—2. Loans to oyster planters; purchase and discount of paper by Federal intermediate credit banks**

Subject to the approval of the Governor of the Farm Credit Administration and under rules and regulations to

be prescribed by the Production Credit Commissioner, production credit associations organized under this subchapter are authorized to make loans to oyster planters; to sell, discount, assign, or otherwise dispose of any loans made by them under the provisions of this section; and to do any and all other things necessary to carry these provisions into effect. With the approval of the Governor of the Farm Credit Administration and under rules and regulations to be prescribed by the Intermediate Credit Commissioner, the Federal intermediate credit banks are authorized and empowered to discount for or purchase from any production credit association any note, draft, or other such obligation representing a loan or loans made under the provisions of this section; and to make loans or advances direct to any such organization secured by such obligations. June 18, 1934, c. 574, 48 Stat. 983; June 3, 1935, c. 164, § 17(c), 49 Stat. 318.

**§ 1131h. Borrowing from and rediscounting paper with Federal intermediate credit banks; limitation on power to borrow from or rediscount paper with other institutions**

Production Credit Associations doing business under this subchapter and subchapters V and VI of this chapter are authorized to borrow from, and rediscount paper with Federal Intermediate Credit Banks subject to the restrictions, limitations, and conditions applicable under subchapter III of this chapter, as amended. Except with the approval of the Governor, Production Credit Associations shall not have the power to borrow from or rediscount paper with any other bank or agency. June 16, 1933, c. 98, Title II, § 24, 48 Stat. 261.

**§ 1131i. Revolving fund**

(a) There is created a revolving fund of not to exceed $60,000,000 which shall be made up as follows:

(1) The Reconstruction Finance Corporation is authorized and directed to make available to the Governor of the Farm Credit Administration all unobligated balances of the following funds and all sums heretofore returned or released to the corporation from such funds:

(A) Any balances of funds for, and all collections on loans by, the Secretary of Agriculture pursuant to section 2 of the Reconstruction Finance Corporation Act;

(B) All collections on loans made or to be made pursuant to the Act of February 4, 1933 (chapter 35, 47 Stat. 795);

(C) All balances of funds authorized and directed to be made available to the Secretary of Agriculture by such act and not used for loans pursuant thereto; and

(D) Any balances of the funds originally directed to be allocated and made available to the Secretary of Agriculture by such acts except as expended pursuant to section 1148 of this title.

(2) There are made available to the Governor of the Farm Credit Administration all unobligated balances of appropriations and funds available thereunder to enable the Secretary of Agriculture to make advances or loans under the following Acts and resolutions, and all repayments of such advances and loans: March 3, 1921 (41 Stat. 1347), March 20, 1922 (42 Stat. 467), April 26, 1924 (43 Stat. 110), February 28, 1927 (44 Stat. 1251), February 25, 1929 (45 Stat. 1306), as amended May 17, 1929 (46 Stat. 3), March 3, 1930 (46 Stat. 78, 79), December 20, 1930 (46 Stat. 1032), as amended February 14, 1931 (46 Stat. 1160), and February 23, 1931 (46 Stat. 1276), and Public Resolution Numbered 11, Seventy-second Congress, approved March 3, 1932, and the notes or other obligations evidencing such advances and loans and the security therefor are transferred to the Governor of the Farm Credit Administration.

(3) There is authorized to be appropriated the sum of $40,000,000 out of any money in the Treasury not otherwise appropriated.

(b) There is authorized to be appropriated the sum of $2,000,000, which shall remain available until expended, for all necessary administrative expenses in connection with the establishment and supervision of the Production Credit Associations.

(c) The authority of the Governor of the Farm Credit Administration to allocate and expend out of the funds covered by subsection (a) of this section such amounts as he shall deem necessary for salaries, expenses, and all other administrative expenditures in the execution of the functions for which such funds have hitherto been available shall not be deemed to be restricted by this section.

(d) Expired.

(e) The amount of all balances, collections, and appropriations allocated under subsection (a) of this section to the revolving fund created thereunder, which is in excess of $120,000,000, is made available to the Governor of the Farm Credit Administration for the establishment of a revolving fund, of not to exceed $70,000,000. Out of such revolving fund, the Governor is authorized to allocate and, with the approval of the Secretary of the Treasury, to expend such amounts as he deems necessary for subscriptions to the capital stock of Federal Intermediate Credit Banks. June 16, 1933, c. 98, Title I, § 5, 48 Stat. 258; Jan. 31, 1934, c. 7, §§ 14, 15(a), 48 Stat. 348; July 26, 1956, c. 741, Title I, § 105(d), 70 Stat. 665.

### § 1134. Establishment; number; location

The Governor of the Farm Credit Administration, hereinafter in this Act referred to as the "Governor", is au-

thorized and directed to organize and charter twelve banks to be known as "banks for cooperatives". One such bank shall be established in each city in which there is located a Federal land bank. The members of the several farm credit boards of the farm credit districts provided for in section 640a of this title, shall be ex officio the directors of the respective banks for cooperatives. Such directors shall have power, subject to the approval of the Governor, to employ and fix the compensation of such officers and employees of such banks as may be necessary to carry out the powers and duties conferred upon such banks under this Act. June 16, 1933, c. 98, Title I, § 2, 48 Stat. 257; Aug. 17, 1937, c. 704, § 11, 50 Stat. 708; July 26, 1956, c. 741, Title I, § 105 (a), 70 Stat. 664.

**§ 1134a. Charters and bylaws**

The charters of the Banks for Cooperatives shall be granted by the governor upon application of the directors of the Federal land bank of the proper district, and applications and charters shall be in such form as the governor shall prescribe. The directors shall have power, subject to the approval of the governor, to adopt such bylaws as may be necessary for the conduct of the business of the banks. June 16, 1933, c. 98, Title I, § 3, 48 Stat. 257; July 26, 1956, c. 741, Title I, § 105(b), 70 Stat. 665.

**§ 1134b. Capital stock; amount; value of shares; payments from revolving fund for stock purchased by Government**

The capital stock of each Bank for Cooperatives established under section 1134 of this title shall be in such amount as the governor determines is required for the purpose of meeting the credit needs of eligible borrowers from the bank under sections 1134b-1134e of this title and such amount may be increased or decreased from time to time

by the governor in accordance with such needs. Such stock shall be divided into shares of $100 each. Out of the revolving fund created under section 1141d of this title, the governor, on behalf of the United States, shall make payments for stock in the banks and such payments shall be subject to call in whole or in part by the board of directors of the bank with the approval of the governor. June 16, 1933, c. 98, Title IV, § 40, 48 Stat. 264.

**§ 1134c. Lending power; custodians of collateral**

Subject to such terms and conditions as may be prescribed by the Farm Credit Administration, the banks for cooperatives are authorized (a) to make loans to cooperative associations as defined in the Agricultural Marketing Act, as amended, for any of the purposes and subject to the conditions and limitations set forth in such Act, as amended; (b) to make loans (by way of discount or otherwise) to any bank organized under this subchapter or to Federal land banks or Federal intermediate credit banks; (c) to buy from, and sell to, any such bank or any Federal intermediate credit bank any note, draft, bill of exchange, debenture, or other obligation, or any interest therein; and (d) to borrow from, and discount of rediscount paper with, any and all such banks and commercial banks.

Notwithstanding any limitations or conditions imposed by law, but subject to the availability of funds, each Bank for Cooperatives shall have power and authority to make separate loans to cooperative associations as defined in the Agricultural Marketing Act, as amended, for the purpose of financing the construction of structures for the storage of agricultural commodities (other than structures to provide refrigerated cold storage or structures in areas in which existing privately owned storage facilities for the commodity concerned are adequate) in amounts up to a maximum of

80 per centum of the cost of such structures, as approved by the Bank for Cooperatives to whom application is made for the loan: *Provided*, That the cooperative association which has applied for any loan shall have furnished to the Bank for Cooperatives an appropriate commitment from the Commodity Credit Corporation that the Commodity Credit Corporation will lease or guarantee utilization of not less than 75 per centum of the storage space contained in such structures when completed for a period of at least three years if such structures are not additions to existing structures, or two years if such structures are additions to existing structures.

Notwithstanding any other provision of law, any officer or employee of the Farm Credit Administration or of any bank for cooperatives designated to act as custodian of collateral securing loans made by any such bank to any cooperative association eligible to borrow therefrom may, in accordance with regulations of the Farm Credit Administration, act at the same time as custodian of collateral securing loans made by any other lenders to any cooperative association eligible to borrow from any such bank. June 16, 1933, c. 98, Title IV, § 41, 48 Stat. 264; June 3, 1935, c. 164, § 14, 49 Stat. 317; Aug. 19, 1937, c. 704, § 36, 50 Stat. 717; Oct. 31, 1949, c. 792, Title IV, § 417(a), 63 Stat. 1058; Aug. 11, 1955, c. 785, Title I, § 107, 69 Stat. 662; July 26, 1956, c. 741, Title I, § 105(k), 70 Stat. 665.

**§ 1134d. Stock of banks for cooperatives—Classes of stock; voting rights; dividends; retirement of stock**

(a) Except as provided in section 111 of the Farm Credit Act of 1955, each regional bank for cooperatives shall have the following classes of stock, all of which shall have a par value of $100 per share:

(1) Class A stock shall be issued to and held by the Governor of the Farm Credit Administration on behalf of

the United States, and stock of such banks held by the Governor on the effective date of title I of the Farm Credit Act of 1955 shall be exchanged, share for share, for class A stock of the respective banks. Class A stock shall be nonvoting and no dividends shall be paid thereon. At the end of each fiscal year, each of such banks, subject to the provisions of sections 1134i, 1141d, and 1134b of this title, shall determine the amount of class A stock that shall be retired at par by that bank. The minimum amount of class A stock that shall be retired shall be the equivalent in dollar value of the amount of class C stock issued for that year, except that class C stock issued by a regional bank on account of class C stock issued to it by the central bank, class C stock issued by a regional bank in exchange for class B stock the proceeds of which were used to retire an equivalent amount of class A stock, and class C stock issued by a regional bank in exchange for capital stock of the bank outstanding on the effective date of title I of the Farm Credit Act of 1955, shall not be included in such bank's calculation. Any amount of class A stock retired in excess of such minimum amount in one year may be used to reduce to that extent the amount of such stock required to be retired in any subsequent year. Funds from the retirement of class A stock shall be paid into the revolving fund authorized by the Agricultural Marketing Act, as amended, and shall continue to be available for the purchase of class A stock in the banks in accordance with sections 1134i, 1141d, and 1134b of this title.

(2) Class B stock may be issued in series and amounts approved by the Farm Credit Administration, and may be sold or transferred to any person subject to the approval of the issuing bank. Such stock shall be issued only at par and shall be nonvoting. Any bank may pay dividends of not to exceed 4 per centum per annum on class B stock if

declared by the board of directors and approved by the Farm Credit Administration and if the surplus account of the bank, after payment of such dividends, will not be less than 25 per centum of the sum of all its outstanding capital stock. Dividends on class B stock shall not be cumulative but no bank shall distribute in any year any of its net savings as patronage refunds as provided in section 1134*l*(a) of this title unless for that year a dividend of at least 2 per centum is declared and paid upon outstanding class B stock of the bank. Each series of class B stock shall be issued only with the approval of the Farm Credit Administration and shall carry on the face of each certificate a statement of the maximum dividend which may be declared and paid thereon and of the minimum dividend which shall be declared and paid thereon before the bank may distribute any of its net savings as patronage refunds: *Provided*, That such maximum and minimum dividends may be the same amount. After all class A stock has been retired, class B stock may be called for retirement at par with the approval of the Farm Credit Administration and shall be called in such manner that the oldest outstanding stock at any given time will be retired first. Any holder of class B stock whose stock has been called for retirement may elect, with the approval of the issuing bank, to leave his stock in the bank subject to its being included in the next call for retirement.

(3) Class C stock, except as approved by the Farm Credit Administration and consented to by the issuing bank may be issued only to banks for cooperatives and farmers' cooperative associations as defined in section 1141j (a) of this title. Such stock may be issued in fractional shares, shall be issued at its fair book value not exceeding par, as determined by the bank, and no dividends shall be paid on it. Each holder of one or more shares of class C stock which is eligible to borrow from a bank for cooperatives shall be

entitled to one vote only: *Provided*, That any such holder which within the period of two years next preceding a date, fixed by the Farm Credit Administration, prior to commencement of the voting has not been a borrower from a bank of which it holds class C stock shall not be entitled to vote. From time to time each bank for cooperatives shall obtain information concerning its class C stockholders to determine whether they continue to be eligible to borrow from the bank and to vote. Any class C stockholder found by the bank to be ineligible to borrow shall not be entitled to vote until its eligibility is reestablished to the satisfaction of the bank. Whenever in sections 640a and 636c(a) of this title, provision is made for a nomination or election by cooperatives which are stockholders or subscribers to the guaranty fund of any bank for cooperatives the term "cooperatives which are stockholders or subscribers to the guaranty fund" or the equivalent of that term, shall mean such cooperatives which are eligible to vote. Each borrower from a bank for cooperatives shall be required to own at the time the loan is made at least one share of class C stock. The purchase price of such stock may be retained out of the loan. In addition, each borrower as defined by the Farm Credit Administration for purposes of this sentence, shall be required to invest quarterly in class C stock an amount equal to not less than 10 nor more than 25 per centum, as prescribed by the board of directors of the bank with the approval of the Farm Credit Administration, of the amount of interest payable by it to the bank during the calendar quarter. Payments for such stock shall be made quarterly or when the regular interest payments of the borrower are payable, but the stock shall be issued to the borrower as of the end of each fiscal year in the amount of the payments for stock made by it during the year. Each regional bank shall purchase at least one share of class C stock of the central bank. In addition,

the regional bank shall be required to invest quarterly in class C stock of the central bank an amount equal to not less than 10 nor more than 25 per centum, as prescribed by the board of directors of the central bank with the approval of the Farm Credit Administration, of the amount of interest payable by the regional bank to the central bank during the calendar quarter by reason of any interest purchased by the central bank in a loan made by the regional bank. Payments for such stock shall be made to the central bank and the stock shall be issued to the regional bank in the same manner, insofar as practicable, as is provided in this section for payments for and issuance of stock on account of loans by the regional bank in which the central bank does not purchase any interest. Subject to rules prescribed by the board of directors of the lending bank with the approval of the Farm Credit Administration a borrower may convert class B stock into class C stock for the purpose of making the investment in class C stock required by this paragraph. After retirement of all class A stock, class C stock also may be retired at par by calling the oldest outstanding class C stock, but class C stock that was issued for a fiscal year period shall not be called for retirement until all class B stock that was issued during or prior to that fiscal year has been called for retirement.

**Guaranty fund subscriptions in lieu of stock**

(b) If a cooperative association is not authorized under the laws of the State in which it is organized to take stock in the bank, the bank shall, in lieu thereof, require the association to pay into or have on deposit in a guaranty fund of the bank, or the bank may retain out of the amount of the loan and credit to the guaranty fund, a sum equal to the amount of class C stock which the association would otherwise be required by subsection (a) (3) of this section

to own at the time the loan is made and to purchase thereafter. Any such association may make additional payments into the guaranty fund from time to time in lieu of the purchase of class B stock, and shall receive credits to such fund in lieu of patronage refunds payable in class C stock. Each reference in this Act to capital stock or class B or class C stock shall include also the guaranty fund equivalents of such stock, and, to the extent permitted under the laws of a State in which a cooperative association is organized, a holder of guaranty fund equivalents of either class B or class C stock shall have the same rights and status as a holder of class B or class C stock, respectively. The rights and obligations of the bank as respects such guaranty fund equivalents shall be identical to its rights and obligations as respects class B or class C stock, respectively.

**Lien on stock**

(c) Except as hereinafter provided in the case of an association which is a direct borrower from the central bank, each bank for cooperatives shall have a first lien on all stock in the bank owned by each cooperative association as additional collateral for any indebtedness of such association to the bank. In the case of an association which is a direct borrower from the central bank, the central bank shall have a first lien on any amount of class C stock which the borrowing association owns in any regional bank on account of direct loans of such association from the central bank; and the regional bank shall have a lien on such stock junior only to the lien of the central bank. In any case where the debt of a borrower is in default, the bank may, in accordance with regulations of the Farm Credit Administration, retire and cancel all or a part of the stock of the defaulting borrower at the fair book value thereof, not exceeding par, in total or partial liquidation of the debt, as the case may be, and, to the extent required, corresponding

shares held by a regional bank in the central bank shall be retired.

**Calculation of proportionate interests in banks**

(d) For the purpose of determining pursuant to section 640d of this title, the amount of the capital stock and subscriptions to the guaranty fund of a regional bank for cooperatives held by cooperatives the term "capital stock and subscriptions to the guaranty fund held by cooperatives" or the equivalent of that term shall also mean all outstanding class B and class C stock and the guaranty fund equivalents thereof. June 16, 1933, c. 98, Title IV, § 42, 48 Stat. 264; Aug. 6, 1953, c. 335, § 13, 67 Stat. 396; Aug. 11, 1955, c. 785, Title I, § 101, 69 Stat. 655.

**§ 1134e. Retirement of stock held by Government**

The governor may at any time require any such bank to retire and cancel stock held by the governor in such bank, if, in the judgment of the governor, the bank has resources available therefor, and amounts received by the governor in any such case shall be credited to the revolving fund created under section 1141d of this title. June 16, 1933, c. 98, Title IV, § 43, 48 Stat. 265.

**§ 1134f. Establishment; location**

The governor is authorized and directed to organize and charter a corporation to be known as the "Central Bank for Cooperatives" with its principal office in the District of Columbia and such other offices as in the opinion of the governor may be necessary. June 16, 1933, c. 98, Title III, § 30, 48 Stat. 261.

**§ 1134g. Board of Directors**

The Central Bank for Cooperatives shall have seven directors. Of this number four shall be appointed by the

Governor of the Farm Credit Administration, by and with the advice and consent of the Federal Farm Credit Board, and three shall be elected by the regional banks for cooperatives and cooperative associations: *Provided,* That the terms of office of directors established prior to the effective date of title I of the Farm Credit Act of 1955 shall continue through the thirty-first day of December next following the effective date of said title I and shall expire at the end of that day. Three of the directors appointed by the Farm Credit Administration shall be appointed for terms of one year, two years, and three years, respectively, as designated at the time of appointment and the fourth appointed director shall be appointed for a term of three years and thereafter each appointed director shall be appointed for a term of three years. Any appointed director may be removed at pleasure at any time by the Farm Credit Administration. The Farm Credit Administration shall prescribe rules and regulations for the nominations and elections required by this section. Sufficiently in advance of the first day of January next following the effective date of title I of the Farm Credit Act of 1955, and at any time subsequent to the enactment thereof the Farm Credit Administration shall take all action necessary in order to permit the elections hereby provided and shall group the several farm credit districts into three areas, each of which shall be comprised of four contiguous farm credit districts, and a director shall be elected from nominees from each of such areas by regional banks for cooperatives of the area and cooperative associations of the area eligible to vote. The three elected directors shall be elected for terms of one year, two years and three years, respectively, as shall be designated by the Farm Credit Administration and thereafter elected directors shall be elected for terms of three years: *Provided,* That whenever, as determined by the Farm Credit Administration, the sum of the capital stock and subscriptions to the

guaranty fund of the central bank held by persons other than the Governor of the Farm Credit Administration on behalf of the United States and surplus and reserve accounts of said bank shall equal or exceed 66⅔ per centum of the total capital stock, subscriptions to the guaranty fund and surplus and reserve accounts of said bank as of the date six months before the expiration of the term of office of any appointed director, except the fourth appointed director, whose term next expires, the successor to such director shall be elected from nominees for a term of three years by regional banks for cooperatives of the area and cooperative associations of the area eligible to vote on a basis of areas comprised of two contiguous farm credit districts as designated by the Farm Credit Administration. Appointed directors except the fourth appointed director shall continue to be replaced by elected directors in accordance with the foregoing provisions until the total number of elected directors shall be six, elected one from each of six such areas comprised of two contiguous farm credit districts. Whenever, as determined by the Farm Credit Administration, the sum of the capital stock and subscriptions to the guaranty fund of the central bank held by persons other than the Governor of the Farm Credit Administration on behalf of the United States and surplus and reserve accounts of said bank shall not equal or exceed 66⅔ per centum of the total capital stock, subscriptions to the guaranty fund and surplus and reserve accounts of the banks as of the date six months before the expiration of the term of office of any elected director whose term next expires, the successor to such elected director shall, if the number of elected directors then exceeds three be appointed by the Governor of the Farm Credit Administration by and with the advice and consent of the Federal Farm Credit Board for a term of three years. In any such case where only one additional appointed director is needed in order to increase the total

number of appointed directors to four, and the terms of office of more than one elected director next expire, the Farm Credit Administration shall designate the one of such next expiring terms of office which shall be replaced by the additional appointed director. Any vacancy in the Board whether filled by appointment or by election shall be filled for the unexpired term in the same manner in which the vacant office was filled. Each regional bank for cooperatives, each cooperative association which is a direct borrower from the central bank, each holder of one or more shares of class C stock in a regional bank for cooperatives which is eligible to vote under section 1134d (a) (3) of this title, and each holder of one or more shares of stock in the central bank or any regional bank for cooperatives issued before the effective date of title I of the Farm Credit Act of 1955 which is eligible to vote shall be eligible to vote for directors of the central bank and each such holder shall be entitled to one vote only without regard to the number of shares held in any one or more of said banks, and the vote of any such holder of stock in more than one bank shall be cast only with respect to elections in the area in which is located the main office of such holder. Elected directors shall have been, for at least two years, residents of the area for which they are elected. No person shall be eligible for nomination, election, or appointment as a director if such person has within one year next preceding the commencement of the term been a salaried officer or employee of the Farm Credit Administration or of any corporation operating under its supervision. Any person who is a member of the Federal Farm Credit Board or a district farm credit board when appointed or elected as director shall resign as a member of the Federal Farm Credit Board or the district board before assuming his duties as director of the central bank. No person who becomes such director shall be eligible to continue to serve if he becomes a member of the Federal

Farm Credit Board or any district farm credit board or an officer or employee of the Farm Credit Administration or an officer or employee of any corporation operating under the supervision of the Farm Credit Administration. June 16, 1933, c. 98, Title III, § 31, 48 Stat. 262; Aug. 11, 1955, c. 785, Title I, § 104, 69 Stat. 659.

**§ 1134h. Powers of board of directors; election of Chairman and Vice Chairman**

The Board of Directors of the Central Bank for Cooperatives shall elect a Chairman and a Vice Chairman from among its members. The powers of the Board of Directors shall be such powers as may be prescribed in the charter and bylaws with the approval of the Farm Credit Administration: *Provided*, That said Board without limitation of powers conferred by section 1138 of this title shall have power, subject to approval of the Farm Credit Administration, to appoint and fix the compensation of the chief executive officer and such other officers and employees, experts, and consultants as may be necessary for the efficient conduct of the bank's business: *Provided further*, That the chief executive officer of the bank shall not be an officer or employee of the Farm Credit Administration. June 16, 1933, c. 98, Title III, § 32 48 Stat. 262; Aug. 11, 1955, c. 785, Title I, § 105, 69 Stat. 661.

**§ 1134i. Capital stock**

The capital stock of the central bank shall be in such amount as the governor determines is required for the purpose of meeting the credit needs of eligible borrowers from the bank under sections 1134f—1134m and 1141d of this title, and the governor may from time to time increase or decrease such amount, subject to the limitations contained in sections 1134k and 1134m of this title, in accordance with such needs. The stock of such bank shall be divided into

shares of $100 each. Out of the revolving fund created under section 1141d of this title, the governor, on behalf of the United States, shall subscribe for and make payments for stock in the Central Bank and such payments shall be subject to call in whole or in part by the Board of Directors of the Central Bank with the approval of the governor. June 16, 1933, c. 98, Title III, § 33, 48 Stat. 262; Aug. 11, 1955, c. 785, Title I, § 108(a), 69 Stat. 662.

**§ 1134j. Lending power; prevention of duplication of effort on the part of central bank and banks for cooperatives**

Subject to such terms and conditions as may be prescribed by the Farm Credit Administration, the Central Bank is authorized: (a) to make loans to cooperative associations as defined in the Agricultural Marketing Act, as amended, for any of the purposes and subject to the conditions and limitations set forth in such Act; (b) to make loans (by way of discount or otherwise) to banks for cooperatives organized under section 1134 of this title or to Federal land banks or Federal intermediate credit banks; (c) to buy from, and sell to, any such bank or any Federal intermediate credit bank any note, draft, bill of exchange, debenture, or other obligation, or any interest therein; and (d) to borrow from, and discount or rediscount paper with, any and all such banks and commercial banks.

The governor shall, by regulation or by prescribing the terms of the charters issued to the Central Bank for Cooperatives and the Banks for Cooperatives, or both, provide such limitations, as between the two types of banks, on the classes of borrowers to which loans may be made and the amount of the loans which may be made to individual borrowers, as will best insure the absence of duplication of effort by the two types of banks and will secure

the greatest efficiency in extending the benefits of sections 1134b—1134m and 1141d of this title to borrowers.

Notwithstanding any limitations or conditions imposed by law, but subject to the availability of funds, the Central Bank for Cooperatives shall have power and authority to make separate loans to cooperative associations as defined in the Agricultural Marketing Act, as amended, for the purpose of financing the construction of structures for the storage of agricultural commodities (other than structures to provide refrigerated cold storage or structures located in areas in which existing privately owned storage facilities for the commodity concerned are adequate) in amounts up to a maximum of 80 per centum of the cost of such structures, as approved by such bank: *Provided,* That the cooperative association which has applied for any loan shall have furnished to such bank an appropriate commitment from the Commodity Credit Corporation that the Commodity Credit Corporation will lease or guarantee utilization of not less than 75 per centum of the storage space contained in such structures when completed for a period of at least three years if such structures are not additions to existing structures, or two years if such structures are additions to existing structures. After the effective date of title I of the Farm Credit Act of 1955 any amendment in the terms of the charter issued to any bank for cooperatives and any regulation issued under authority of this section or otherwise affecting lending operations of any such bank shall be consistent with the principle that the central bank shall make loans only in cases where it is not practicable for the loan to be made by a regional bank. June 16, 1933, c. 98, Title III, §§ 34, 38, 48 Stat. 262, 264; June 3, 1935, c. 164, § 13, 49 Stat. 317; Aug. 19, 1937, c. 704, § 35, 50 Stat. 717; Oct. 31, 1949, c. 792, Title IV, § 417(b), 63 Stat. 1059; Aug. 11, 1955, c. 785, Title I, §§ 106, 108(b), 69 Stat. 661; July 26, 1956, c. 741, Title I, § 105(j), 70 Stat. 665.

**§ 1134k. Regional bank stock provisions as applicable; ownership of stock by Central Bank borrowers; payments**

All provisions of law with respect to class A, class B, and class C stock in the regional banks for cooperatives shall apply to the Central Bank for Cooperatives except as they may be inconsistent with the provisions of this section. Each borrower from the central bank shall be required to own at the time the loan is made at least one share of class C stock in such regional bank as the Farm Credit Administration shall designate and shall be required to invest quarterly in class C stock in such regional bank or banks as the Farm Credit Administration shall designate an amount equal to not less than 10 nor more than 25 per centum, as prescribed by the board of directors of the central bank with the approval of the Farm Credit Administration, of the amount of interest payable by such borrower to the central bank during the calendar quarter. Payments for such stock shall be made quarterly or when the regular interest payments of such borrower are payable; but the stock shall be issued to the borrower as of the end of each fiscal year in the amount of the payments for stock made by it during such year. The regional bank whose stock is so issued to such borrower shall purchase a corresponding amount of class C stock in the central bank. June 16, 1933, c. 98, Title III, § 35, 48 Stat. 263; June 3, 1935, c. 164, § 15, 49 Stat. 318; Aug. 11, 1955, c. 785, Title I, § 102, 69 Stat. 658.

**§ 1134*l*. Earnings and reserves—Application of savings**

(a) Each bank for cooperatives, at the end of each fiscal year, shall determine the amount of its net savings after paying or providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves) and shall apply such sav-

ings as follows: (1) To the restoration of the amount of the impairment, if any, of capital stock, as determined by its board of directors; (2) 25 per centum of any remaining savings shall be used to create and maintain a surplus account; (3) if said bank shall have outstanding capital stock held by the United States during the whole or any part of the fiscal year, it shall next pay to the United States as a franchise tax, a sum equal to 25 per centum of its net savings then remaining, not exceeding, however, a rate of return on such Government capital calculated at a rate equal to the computed average annual rate of interest on all public issues of public debt obligations of the United States issued during the fiscal year ending next before such tax is due, as certified to the Farm Credit Administration by the Secretary of the Treasury; (4) reasonable contingency reserves may be established; (5) dividends on class B stock may be declared as provided in section 1134d (a) (2) of this title; and (6) any remaining net savings shall be distributed as patronage refunds as provided in subsection (b) of this section: *Provided*, That any patronage refunds received by a regional bank from the central bank shall be excluded from net savings of the regional bank for the purpose of computing such franchise tax. Amounts applied as provided in (2) and (4) above after the effective date of title I of the Farm Credit Act of 1955 shall be allocated on a patronage basis approved by the Farm Credit Administration. At the end of any fiscal year, any portion of the reserve established under (4) above which is no longer deemed necessary shall be transferred to the surplus account and, if the surplus account of any such bank for cooperatives exceeds 25 per centum of the sum of all its outstanding capital stock, the bank may distribute in the same manner as a patronage refund any part or all of such excess which has been allocated: *Provided*, That any surplus and contingency reserves shown on the books of the banks as of the effective

date of title I of the Farm Credit Act of 1955 shall not be distributed as patronage refunds. In making such distributions, the oldest outstanding allocations shall be distributed first. Wherever used in this chapter, the words "surplus account" as applied to any bank for cooperatives shall mean any surpluses and contingency reserves shown on the books of the banks as of the effective date of title I of the Farm Credit Act of 1955 and any amounts applied as provided in (2) above after the effective date of said title I. Said surplus account shall be divided to show the amounts thereof subject to allocation as provided in this section and may be further subdivided as prescribed by the Farm Credit Administration. In the event of a net loss in any fiscal year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves), such loss shall be absorbed by: first, charges to allocated contingency reserves; second, charges to allocated surplus; third, charges to other contingency reserves and surplus; fourth, the impairment of class C stock; and fifth, the impairment of all other stock.

**Patronage refunds**

(b) The patronage refunds of each regional bank for cooperatives shall be paid in class C stock to borrowers, as defined by the Farm Credit Administration for the purposes of this subsection, during the fiscal year for which the refunds are declared. Patronage refunds of the Central Bank for Cooperatives shall be paid in class C stock to the regional banks for cooperatives upon the basis of interests held by the central bank in loans made by the regional banks and upon direct loans made by the central bank to cooperative associations; and any part of such refunds derived from such direct loans of the central bank shall be paid in class C stock issued to the regional bank or banks which issued to the borrower the stock incident to the loans, or to a regional

bank or banks designated by the Farm Credit Administration, and such bank or banks shall issue a like amount of class C stock to the borrowers. All patronage refunds shall be paid in the proportion that the amount of interest earned on the loans of each borrower bears to the total interest earned on the loans of all borrowers during this fiscal year.

**Distribution of assets on liquidation or dissolution**

(c) In the case of liquidation or dissolution of any bank for cooperatives, after the payment or retirement, as the case may be, first, of all liabilities; second, of all capital stock issued before the effective date of title I of the Farm Credit Act of 1955 held by cooperative associations at par, all class A stock at par, and all class B stock at par; and third, of all class C stock at par; any surpluses and contingency reserves existing on the effective date of said title I shall be paid to the holders of outstanding capital stock issued before the effective date of said title I, class A stock and class C stock pro rata, and any remaining surplus and contingency reserves shall be distributed to those entities to which they are allocated on the books of the bank. If it should become necessary to use any surplus or contingency reserves to pay any liabilities or to retire any capital stock, allocated contingency reserves and surplus shall be exhausted first in accordance with rules prescribed by the Farm Credit Administration. June 16, 1933, c. 98, Title III, § 36, 48 Stat. 263; Aug. 6, 1953, c. 335, § 12, 67 Stat. 395; Aug. 11, 1955, c. 785, Title I, § 103(a), 69 Stat. 658.

**§ 1134m. Debentures; amount; security; preparation and issue; custody and collateral; consolidated debentures of Central Bank and regional banks**

The Central Bank is authorized to issue debentures, but the amount of debentures which may be outstanding may not exceed at any one time five times the paid-in capital

and surplus of the bank. Such debentures shall be issued at such times and subject to such terms and conditions as the board of directors shall determine but shall bear such interest rates as may be fixed by the chairman of the board. Such debentures shall be secured by collateral which shall be at least equal in value to the amount of debentures outstanding and which shall consist of cash, direct obligations of the United States, or notes or other obligations discounted or purchased or representing loans made under section 1134j of this title. The provisions of law applicable to the preparation and issue of Federal intermediate credit bank debentures shall, so far as applicable, govern the preparation and issue of debentures issued under this paragraph. The governor shall appoint a custodian of such collateral who shall have power subject to such rules and regulations as the governor may prescribe to approve and accept substitutions of collateral.

When the Central Bank for Cooperatives and the regional banks for cooperatives shall by resolutions consent thereto, consolidated debentures of the thirteen banks for cooperatives may be issued in the manner and form and on terms and conditions approved by the Farm Credit Administration. There shall be a debenture committee comprised of the presidents of the twelve regional banks for cooperatives and the chief executive officer of the Central Bank for Cooperatives which shall exercise with respect to such consolidated debentures powers and functions equivalent to the powers and functions of the Bond Committee of the Federal Land Banks as authorized by the Federal Farm Loan Act, as amended, and shall operate in accordance with the provisions of law applicable to such Bond Committee. Such debentures shall be made payable at any of the banks for cooperatives and may be made payable at any Federal Reserve bank or banks designated on the face of the deben-

tures. Such debentures shall be the joint and several obligations of the Central Bank for Cooperatives and of the regional banks for cooperatives, and each of such banks is authorized and directed to take such action as is necessary to become obligated for such debentures. The debentures shall be secured by collateral which shall be at least equal in value to the amount of debentures outstanding and which shall consist of cash, direct obligations of the United States, or notes or other obligations discounted or purchased or representing loans made under sections 1134c and 1134j of this title. The Farm Credit Administration shall appoint a custodian or custodians of such collateral who shall have power subject to such rules and regulations as the Administration may prescribe to approve and accept substitutions of collateral. The total amount of such consolidated debentures plus any outstanding individual debentures of the Central Bank which may be issued and outstanding at any time shall not exceed eight times the capital and surplus of the Central and regional banks for cooperatives. The provisions of law made applicable by the preceding paragraph of this section to the preparation and issue of debentures by the Central Bank for Cooperatives shall govern the preparation and issue of debentures under this paragraph and they shall be signed by the Governor of the Farm Credit Administration and attested by any deputy governor. Insofar as applicable, the provisions of the Federal Farm Loan Act, as amended, relative to the call for additional security and failure of any bank to pay its proportion of interest or principal shall apply to the consolidated debentures of the banks for cooperatives. Debentures issued under the provisions of this subchapter by banks for cooperatives shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits. June 16, 1933, c. 98, Title III, § 37, 48 Stat. 263; Aug. 23, 1954, c. 834, § 1, 68 Stat. 770.

**§ 1014. Loan and credit applications generally; renewals and discounts; crop insurance**

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Reconstruction Finance Corporation, Farm Credit Administration, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, any Federal intermediate credit bank, or the Federal Farm Mortgage Corporation, or any division, officer, or employee thereof, or of any corporation organized under sections 1131-1134m of Title 12, or in which a Production Credit Corporation holds stock, or of any regional agricultural credit corporation established pursuant to law, or of the National Agricultural Credit Corporation, a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, a Federal Savings and Loan Association, a Federal land bank, a joint-stock land bank, a National farm loan association, or of a Federal Reserve bank, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years, or both. June 25, 1948, c. 645, 62 Stat. 752, amended May 24, 1949, c. 139, § 21, 63 Stat. 92.

## APPENDIX B—OPINIONS AND JUDGMENTS BELOW

# United States Court of Appeals

TENTH CIRCUIT

NO. 7749—MAY TERM, 1965.

EVERETT ROBINSON,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the District of Kansas.

(Filed May 26, 1965. Robert B. Cartwright, Clerk.)

Jack E. Dalton, Jetmore, Kansas, (Harley & Grist, Wichita, Kansas, Tom Harkness, Ness City, Kansas, and Van Smith, Jetmore, Kansas, were with him on the brief), for Appellant.

Melvin M. Gradert, Assistant U.S. Attorney, Wichita, Kansas, (Newell A. George, U.S. Attorney, Wichita, Kansas, with him on the brief), for Appellee.

Before PICKETT and HILL, United States Circuit Judges, and CHRISTENSEN, United States District Judge.

PICKETT, Circuit Judge.

The defendant Robinson was convicted of making a false statement as to his financial condition in an application for a loan from a corporation organized under 12 U.S.C. §§1131-1134(m), in violation of 18 U.S.C. §1014. He appeals from a judgment and sentence entered thereon.

On January 12, 1961 Robinson submitted a written application for a loan to the Larned Production Credit Association, a corporation organized in Kansas under the provisions of 12 U.S.C. §§1131-1134(m). The application was signed by Robinson and listed total liabilities in the sum of $30,000. The indictment alleged that the liabilities in fact exceeded $75,000. Robinson admitted that his liabilities at the time the application was prepared far exceeded the sum of $30,000.[1] His explanation for his failure to disclose

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1. After testifying that he furnished to Mr. Hammond, the Manager of the Corporation, the data to be inserted in the application form which included as his total liabilities only a $30,000 item due the Trego Wakeeney Bank, Robinson stated:

"Q. Mr. Robinson, I am going to hand you what has been marked as Government's Exhibit 13, which is a note dated August 22, 1960, to Woods & Defke in the amount of $50,000.00. And ask you—ask you if you told him about that note? A. No, sir, I didn't.

Q. That is an unsecured note? A. Yes, sir.

Q. I hand you what has been marked as Government's Exhibit 12, which is a note dated August 22, 1960, to Woods & Defke in the sum of $13,120.00. Did you tell him about that note? A. Yes, sir—no, sir, I didn't. Didn't tell him about it.

Q. All right, sir. Now, two days prior to the date that this application was made you received a loan from American State Bank at Great Bend, Kansas, did you not? A. I thought I received it from Mr. Thies.

Q. From whom did you get the $25,000.00? A. Mr. Thies.

Q. That is at the American State Bank? A. Yes, sir.

Q. And you signed a note for twenty-five thousand; didn't you? A. I—the way he told me, he had some money on time deposit, and he said, 'I'm going to loan you my personal money.' I didn't know I owed the Bank.

Q. But, Mr. Robinson, you signed an unsecured note for $25,000.00 two days before you signed this application; didn't you? A. Well, yes, I signed the note. But I thought it was Mr. Thies's money, the way he told me.

Q. Would it have made any difference to whom it was? A. Well, it made a difference whether I owed the Bank or a personal note.

additional liabilities was that the Manager only asked him how much he owed the Bank where he was doing business. It is shown by the testimony of the Manager that Robinson came to the corporation office and told him that he desired to make application for a loan. Robinson was advised that it would be necessary for him to complete a financial statement and a loan application. The application form supplied by the corporation contained numerous questions, including those with reference to the financial condition of the applicant. The questions were submitted to Robinson orally and his answers were inserted on the form by the manager. Upon completion of the application it was

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Footnote 1 continued from page A33.

Q. Did you tell Mr. Hammond that you had signed a note for $25,000.00 two days before that was unsecured to The American State Bank, or to Mr.— A. No.

Q. —or to American State Bank or Mr. Thies or anyone else? A. No, I didn't.

Q. Was that the check which is marked as Exhibit 14 which you received from the American State Bank? A. Well, I guess that's a copy of it. I don't think that's the check. Draft on the Commerce Trust. * * *

Q. (By Mr. Green) Mr. Robinson, I hand you what has been marked as Government's Exhibit 11, which is a check in the amount of $40,000.00 dated September 15, 1959, to Woods and Defke, and ask you if you advised Mr. Hammond about that? A. No, I didn't.

Q. Now, ten days prior to the time you signed this application, you signed a note to Viola Sclagel for $5500.00 dated January 2nd, 1961. I ask you if you advised Mr. Hammond about that note? A. No, sir.

Q. Ten days prior you signed a note for $11,000.00 to Ben Sclagel. Did you advise Mr. Hammond about that note? A. No, I didn't.

Q. On September 6th, 1960, you received $25,000.00 from John—what is John's name? A. Eaton.

Q. Did you tell Mr. Hammond about that indebtedness? A. No." * * *

signed by Robinson. The amount for which the loan was to be made was not included in the application because it had not yet been determined. The application for the loan was approved on January 17, 1961 for $30,000, which amount was then inserted in the application. Referring to the information furnished by Robinson in preparation of the financial statement in the application, the manager stated that "The amount of his liabilities and his assets are exactly as he stated them." The evidence is uncontradicted that Robinson's statement of his liabilities in the application and financial statement are false.

It is urged that the trial court should have directed a verdict of acquittal for Robinson for the reason that the record shows that the loan was actually approved prior to the execution of the application and that the corporation did not rely upon information in the application for approval of the loan. Apparently Robinson had discussed the matter with different corporation board members and he was advised at different times that his application should receive favorable consideration, but the loan was not approved for payment until the loan committee met January 17, 1961. Immediately after the approval for final disposition of the application, Robinson was notified that a loan for $30,000 had been approved and the money would be available upon execution of a note for $31,580.00.[2] The motion for acquittal was not well taken.

Prior to the trial a motion for a bill of particulars was submitted to the court. During the hearing on this motion the court stated that the defendant was entitled to have access to the signed application and any other statement in the possession of the United States which the de-

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2. The $31,580.00 included $1,580.00 for the purchase of 380 shares of Class B stock of the corporation.

fendant had signed. The District Attorney stated that he would be "glad to furnish" a copy of any instruments bearing the defendant's signature. No formal order was entered and no time was fixed for compliance as contemplated by Rule 16, F.R.Cr.P.[3] Defendant made no request for copies or permission to examine any documents which he had signed until time for trial, some five months later. The District Attorney explained that he construed the order to be that copies of signed instruments were to be furnished upon request. The order was informal and this interpretation was justified. Furthermore, there is no showing that defendant was prejudiced in any manner by his failure to have copies of the exhibits signed by him or that he did not know the contents of them. The admission in evidence of the signed application was not error.

The court instructed the jury that the defendant Robinson had testified that he signed the application for a loan on January 12, 1961, and "therefore the jury are entitled to draw from that fact the inference that he had knowledge of the information it contained at the time he signed it." It is contended that the evidence shows that the application was made and completed by the corporation and was signed by the defendant without being read. It is argued that under these circumstances it was improper to instruct the jury that it was entitled to infer that the defendant knew its contents. The evidence is uncontradicted that Robinson furnished the material information contained in the application and he signed it im-

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3. Rule 16, F.R.Cr.P., provides: "* * * The order shall specify the time, place and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just."

mediately after the information was furnished. The giving of the instruction was not erroneous.

During the course of the jury's deliberations, it sent a communication to the court that it was deadlocked and it was believed that a verdict could not be reached at any time. Upon receipt of this notice the court further instructed the jury and gave the typical instruction, sometimes known as the "Allen" instruction. This charge requires the jury to give further consideration to the case and advises it that in conferring together as jurors, each should consider the view of others with a disposition to reexamine his own views. The jury was told that if a greater number are for conviction, each dissenting juror is to consider whether a doubt in his own mind is a reasonable one, and the same consideration should be given by the minority if the majority is for acquittal. This type of instruction has been approved in this circuit. DeVault v. United States, 10 Cir., 338 F.2d 179; Carter v. United States, 10 Cir., 333 F.2d 354; Mills v. Tinsley, 10 Cir., 314 F.2d 311, cert. denied 374 U.S. 847; Apodaca v. United States, 10 Cir., 188 F.2d 932. See Allen v. United States, 164 U.S. 492.

A timely motion for a new trial was filed on the grounds of newly discovered evidence. Attached to the motion was an affidavit of a former employee of the corporation, the gist of which was that the loan was approved and the drafts drawn prior to the time that the application was completed. A motion for a new trial upon the ground of newly discovered evidence is not regarded with favor, and will be granted only with great caution. Long v. United States, 10 Cir., 139 F.2d 652. It is well settled that a new trial will not be granted where the newly discovered evidence is merely cumulative or of an impeaching nature. It must be material to the issues involved and to be of such a nature that upon a new trial a different re-

sult would likely be reached. Wion v. United States, 10 Cir., 337 F.2d 230, and cases cited; Long v. United States, supra. There is evidence in the record similar to the statements in the affidavit which tended to show that the loan may have been approved before the date of the application. Undoubtedly there had been some discussions concerning a loan with Robinson prior to the time of the application, and it is not unlikely that he may have been told that the loan would be approved, but there is no evidence that a loan for any amount was agreed upon, and it is undisputed that the amount of the loan which was finally authorized was determined from information in the application and the figures supplied thereafter. It is well settled that a motion for a new trial is addressed to the sound discretion of the trial judge and the action will be disturbed on appeal only on a showing of abuse of that discretion. Baca v. United States, 10 Cir., 312 F.2d 510, cert. denied 373 U.S. 952; Wion v. United States, supra; Apodaca v. United States, supra; Long v. United States, supra. We find no abuse of discretion in denying the motion.

Other errors presented in Robinson's brief have been considered and found to be without merit.

AFFIRMED.

# In the Supreme Court of the United States

OCTOBER TERM, 1965

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No. 380

EVERETT ROBINSON, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is reported at 345 F. 2d 1007.

### JURISDICTION

The judgment of the court of appeals was entered on May 26, 1965. Mr. Justice White extended the time for the filing of a petition for a writ of certiorari to and including July 23, 1965, and the petition

was filed on July 22, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether it was error to admit in evidence certain documents bearing petitioner's signature.

2. Whether petitioner's motion for acquittal was properly denied.

3. Whether certain of the trial court's instructions to the jury, including a supplemental instruction based upon the instruction approved in *Allen* v. *United States*, 164 U.S. 492, 501, were improper.

4. Whether the trial court erred in denying petitioner's motion for a new trial based on newly discovered evidence.

## STATEMENT

Petitioner was convicted by a jury in the United States District Court for the District of Kansas of willfully and knowingly making a false statement in an application for a loan to Larned Production Credit Association for the purpose of influencing that Association, in violation of 18 U.S.C. 1014 (R. 17). He was sentenced to imprisonment for a period of two years (R. 18). The court of appeals affirmed the conviction (Pet. App. B).

The evidence showed that petitioner came to the office of the Larned Production Credit Association on January 12, 1961, to make an application for a loan (R. 35-37). Mr. Hammond, manager of the Association, told petitioner "he would need to complete a

financial statement and loan application" (R. 37). Mr. Hammond asked petitioner the questions on the loan application and entered the answers, and petitioner signed the completed form (R. 37-41, 59, 64, 113).[1] The total amount of liabilities listed by petitioner under questioning by Mr. Hammond was $30,000 owed to the Trego Wakeeney Bank (R. 40, 70-71, 77-79, 113-115). In fact, at the time the application was signed by petitioner he had additional outstanding unsecured debts amounting to some $169,620 (R. 89-96, 101, 113-115).

On January 17, 1961, the executive board of the Association considered petitioner's application and, in reliance on the information given, approved a loan of $30,000 (R. 44-45, 81-82, 86-87). Petitioner signed a note dated January 17, 1961, for $31,580 and executed a draft on the account of the Production Credit Association for $30,000 on January 18, 1961 (R. 42-44, 65).

## ARGUMENT

1. Petitioner contends (Pet. 4) that documents bearing his signature should have been excluded from evidence on the ground that the government had failed to deliver copies of them to him in accordance with

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[1] Petitioner indicated that he would like to borrow up to $70,000 but would take whatever the Association felt could be advanced (R. 41). As a result, certain items, such as amount of loan, purchase of stock, the maturity date and repayment dollars, were left blank (as undetermined) until the executive board could meet to approve the definite amount of the loan (R. 69-70, 76).

the orders of the trial court. The record shows that at a hearing on petitioner's motion for a bill of particulars held on December 28, 1960, the following took place (R. 29-30):

> The Court: Well, do you have a signed application by [petitioner] that he hasn't got access to? He is entitled to anything he signed. If he signed something, I think he is entitled to that. The balance of the motion will be overruled.
>
> Mr. Grist [defense counsel]: I think that is true. I don't believe they furnished us with a copy of the application.
>
> The Court: I think that is all he is entitled to.
>
> Mr. Gradert [government counsel]: Anything that bears his signature, for instance, the application, I would be glad to furnish him copies of that.
>
> The Court: That or anything that he signed on which the contention is based, I think he is entitled to a copy of it or should see it. He should have a copy of it, anyway. But if he hasn't let him have it.

Government counsel understood the ruling to mean that upon request the government was to permit inspection by, or furnish copies to, petitioner of any papers signed by petitioner to which he did not have access. The government stood ready to comply at all times, but no request was ever made.[2] Instead, at

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[2] The documents in question include the loan application and various notes of indebtedness signed by petitioner. The order of the court was never formally entered and no time for compliance was fixed as contemplated by Rule 16, F. R. Crim. P.

trial some five months later petitioner sought to exclude such documents when introduced as part of the government's case. It is apparent from the record that the order of the court contemplated that petitioner would take the initiative in ascertaining which documents, if any, he wished to request. Since all of the documents in question had been signed by petitioner, it was reasonable for government counsel to assume (in the absence of any request) that copies were in his possession or otherwise accessible to him. At all events, petitioner has made no showing that failure to deliver copies of the papers prejudiced him. In the circumstances, the trial court properly admitted the documents (R. 37-38).

2. Contrary to petitioner's contention (Pet. 2, 5), the evidence was sufficient for the jury to find beyond a reasonable doubt that petitioner willfully and knowingly made a false statement of his liabilities in the loan application for the purpose of influencing the Association in approving his loan (See Statement, *supra*).

3. Petitioner's contentions that some of the instructions to the jury (Pet. 2, 5-6) were improper are without merit.

*a.* Petitioner asserts that the following instruction required the jury, as a matter of law, to find against petitioner on an essential disputed issue of fact (R. 11):

> In this case, the defendant, Everett Robinson testified that he signed the application to the Larned Production Credit Association on Janu-

> ary 12, 1961, and therefore the jury are entitled to draw from that fact the inference that he had knowledge of the information it contained at the time he signed it.

The uncontradicted evidence shows that Mr. Hammond went through the application with petitioner, question by question, filling it in with information supplied by petitioner, and that petitioner then signed it. The judge told the jury merely that they were "entitled" to draw the inference of knowledge of the contents of the document at the time of signing from the fact of the signature. On the evidence here, such an inference was clearly reasonable and the instruction was, therefore, proper.

*b.* Upon receiving a communication from the jury that they could not agree, the court instructed them in language substantially the same as that approved by this court in *Allen* v. *United States*, 164 U.S. 492, 501-502, on the importance of reaching a verdict and the methods and attitudes applicable to jury deliberations (R. 129-131). It also stated (R. 131):

> You are not partisans. You are judges, you are judges of the facts. And your sole purpose is to ascertain the truth from the evidence before you. You are the sole and exclusive judges of the credibility of all the witnesses, and the weight and effect of all the evidence. In performing this high duty you are at liberty to disregard all the comments of both the Court and Counsel, including, of course, the remarks I am now making to you. But, remember at all times that no Juror is expected to yield a conscientious conviction he or

> she may have as to the weight or effect of the evidence, but also remember that after full deliberation, after full consideration and deliberation of all the evidence, it is your duty to agree upon a verdict if you can do so without violating your individual judgment or your conscience.

It has long been settled that a court may give the familiar *Allen* charge, if, as here, it makes plain that no juror is merely to acquiesce in the conclusion of his fellows or yield a conscientious conviction that he may have upon the evidence. See *Kawakita* v. *United States*, 343 U.S. 717; *Lias* v. *United States*, 284 U.S. 584.[3] In addition, the record does not indicate that petitioner made timely objection; hence, he cannot now complain. Rule 30, F. R. Crim. P.

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[3] Use of the *Allen* instruction was one of the alleged errors cited to this Court in *Kawakita*. See Brief for Petitioner, No. 570, October Term, 1951, 160-169. The Court disposed of the contention by grouping it with other alleged errors of which it said "they are either insubstantial or so adequately disposed of by the Court of Appeals that we give them no notice." 343 U.S. at 744. In *Lias*, this Court affirmed the judgment of the court of appeals *per curiam*, simply citing *Allen*. The instruction has also been upheld in every circuit that has considered it. *E.g.*, *United States* v. *Kahaner*, 317 F.2d 459, 483-485 (C.A. 2), certiorari denied, 375 U.S. 835, 836; *United States* v. *Upchurch*, 286 F.2d 516, 518 (C.A. 4); *Andrews* v. *United States*, 309 F.2d 127 (C.A. 5), certiorari denied, 372 U.S. 946; *United States* v. *Barnhill*, 305 F.2d 164 (C.A. 6), certiorari denied, 371 U.S. 865; *United States* v. *DeLucia*, 262 F.2d 610, 616 (C.A. 7), certiorari denied, 359 U.S. 1000; *Holdridge* v. *United States*, 282 F.2d 302, 311 (C.A. 8); *Zamloch* v. *United States*, 193 F.2d 889, 893 (C.A. 9), certiorari denied, 343 U.S. 934; *Mills* v. *Tinsley*, 314 F.2d 311 (C.A. 10), certiorari denied, 374 U.S. 847; *Bord* v. *United States*, 133 F.2d 313, 315 (C.A.D.C.), certiorari denied, 317 U.S. 671.

4. Petitioner made a motion for a new trial based on newly discovered evidence. This was supported by an affidavit of the lady who was the Association's bookkeeper at the time petitioner's loan was being considered (R. 21-23). She stated that some time in January 1961 a draft drawn by petitioner had come in to the Association, but that she had been unable to find a loan application or loan commitment in petitioner's file. When she inquired of Mr. Hammond, he said that he did not yet know what the loan commitment would be and instructed her to post the draft as principal. About two weeks later a second draft drawn by petitioner was received and given the same treatment. Some two weeks thereafter petitioner's application was placed in his file. Petitioner urges that this affidavit shows "that the loan commitment had been determined prior to the loan application by petitioner was filed" (Pet. 6). The affidavit shows no more than the undisputed fact that the amount of the loan requested was not fixed when the application was filed.[4] It was uncontroverted at trial that petitioner, on January 12, 1961, submitted the application approved in the amount of $30,000 on January 17, 1961. Petitioner himself testified that he did not know the amount of the loan or receive any funds until he got the first draft for the $30,000 on January 18, 1961 (R. 115-116). In these circumstances,

[4] The affidavit does suggest that the Association continued to consider petitioner's desire for additional funds after January 17, 1961. In fact, a second loan was made later but it was not considered material to the present indictment and was not pursued at trial (R. 72).

the trial court did not abuse its discretion in refusing to grant a new trial on the ground asserted.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1965.

END